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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Armor Inox SA

Serial No. 78223935

Gerald E. Helget of Briggs and Morgan, P.A. for Armor Inox SA.

Maria-Victoria Suarez, Trademark Examining Attorney, Law Office 102 (Thomas V. Shaw, Managing Attorney).

Before Quinn, Walters and Drost, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On March 11, 2003, Armor Inox SA (applicant) applied to register the term MULTIMOLDS (in typed or standard character form) on the Principal Register for goods ultimately identified as "stackable, metal processing molds for industrial food preparation" in Class 21. The application was originally based on applicant's bona fide intention to use the mark in commerce. On February 17, 2004, applicant filed an amendment to allege use, which was

accepted by the examining attorney.¹ The amendment asserted a date of first use anywhere and in commerce of March 26, 2003. In addition, another paper filed on February 20, 2004, "request[ed] that this application be amended to the Supplemental Register." In a response dated September 29, 2004, applicant included the following statement: "The applicant seeks registration of the mark on the Supplemental Register (i.e., a change of the words 'Principal Register' to 'Supplemental Register')." 15 U.S.C. § 1091.

The examining attorney² refused registration originally on the ground that the mark as applied to the goods was merely descriptive. After the application was amended to the Supplemental Register, the examining attorney refused registration on the ground that the mark was generic. In the final Office action, the examining attorney made the refusals on the grounds of descriptiveness and genericness final and applicant responded by filing this appeal.

We summarize the evidence in this case as follows. With the first Office action, the examining attorney

¹ The examining attorney subsequently "noted that the proposed mark differs on the drawing and the specimen ... [and] refused the specimen because it was unacceptable as evidence of actual trademark use. The applicant submitted an acceptable substitute specimen in its May 17, 2005, response." Examining Attorney's Brief at 6 n.2.

included a definition of "multi" as "1. Many; much; multiple: *multicolor*. 2. a. More than one: *multiparous*. b. More than two: *multilateral*." "Mold" is defined as "a frame or model around or on which something is formed or shaped." Final Office Action. The examining attorney also relies on printouts from the Internet and electronic databases.

It's a Sweet Time of the Year
Homemade Candy Flies off Shelves at Stone's in Oswego

... "with the molds because you could produce only one rabbit at a time." Stachowicz said. "So I started buying **multi-molds**. Now if I run out of something, I can come and tell Tim and we'll have more in two hours."

Post-Standard (Syracuse, NY), April 22, 2000.

Moul'flex Red Silicone Baking Mold Diamond
... create spectacular pastries and molds. These molds are oven, freezer, and dishwasher safe, making baking, molding, and cleaning a snap... Non-stick food grade silicone, temperature resistant from -40 F to 500 F. Each **multi-mold** sheet measures 11 7/8" long by 6 7/8" wide.
www.surfasonline.com

Non-Stick Silicone Molds from World Cuisine
These molds are made of non-stick food grade silicone and are temperature resistant from -40 to 500 F. Each **multi-mold** sheet measures 11 7/8' long by 6 7/8 wide. They are reusable up to 3000 times.
<http://dvorsons.com>

Tartlet **Multi-Mold** Set
... Each set comes with a baking **multi-mold** sheet
www.sharpknives.com

² The current examining attorney was not the original examining attorney in this case.

There are also 3 references that are apparently from foreign sources. One appears to be about food products although it is not clear: "The large installations with very few products will use mainly **multimold** press towers, and the installations with multiple references will probably combine the **multimold** press towers with individual stainless steel molds." www.metalquinia.com. Another is from a multinational corporation that says: "In order to produce high-value cheese, the plant is based in the **multi-mold** basic system..." www.laude.nl. The third website also refers to a cheese making process and it reports that "the pusher keeps the cheeses on the rack while the **multi-mould** is lifted." www.tecnal.fr.³

We also look at applicant's goods. The specimen attached to the first amendment to allege use describes the product as follows:⁴

³ We give these foreign references some limited weight particularly inasmuch as the goods are for industrial use. In re Remacle, 66 USPQ2d 1222, 1224 n.5 (TTAB 2002) ("[I]t is reasonable to assume that professionals in medicine, engineering, computers, telecommunications and many other fields are likely to utilize all available resources, regardless of country of origin or medium. Further, the Internet is a resource that is widely available to these same professionals and to the general public in the United States. Particularly in the case before us, involving sophisticated medical technology, it is reasonable to consider a relevant article from an Internet web site, in English, about medical research in another country, Great Britain in this case, because that research is likely to be of interest worldwide regardless of its country of origin").

⁴ The specimen refers to the mark as MULTIMOULDS rather than MULTIMOLDS. Applicant subsequently submitted a second specimen.

1. Optimal Loading - The Multimoulds system makes the most efficient and economical use of the cooking capacity showing an increase of 20-30% compared with more traditional methods.
2. Reduced Handling - Strategically placed handles enable the Multimoulds to be handled easily during the loading and unloading phase.
3. Total Flexibility - Multimoulds can produce a whole range of products, such as hams and ham logs, pressed or unpressed products, to be cooked in a tank or in a steam chamber.
4. Easy Pressing - The method of stacking facilities pressing, ensuring a homogeneous and consistent product.
5. Space Saving - The compact design of the Multimoulds system allows the customer to make more efficient use of the production area.
6. Solidly Constructed and Hygienic - Because they are made entirely of stainless steel, the Multimoulds are extremely simple to maintain and are solidly constructed under the best hygienic conditions.

Descriptiveness

We briefly discuss the question of whether the mark is merely descriptive. A mark is merely descriptive if it immediately describes the ingredients, qualities, or characteristics of the goods or services or if it conveys information regarding a function, purpose, or use of the goods or services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). See also In re Nett Designs, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); In re MBNA America Bank N.A., 340 F.3d 1328,

67 USPQ2d 1778, 1780 (Fed. Cir. 2003) (A "mark is merely descriptive if the ultimate consumers immediately associate it with a quality or characteristic of the product or service"). To determine whether a mark is descriptive, we must consider the mark in relation to the goods or services, and not in the abstract. Abcor, 200 USPQ at 218.

In her brief, the examining attorney argues that applicant's mark "immediately tells consumers a characteristic of the applicant's goods - that is, [they are] processing molds containing multiple forms." Brief at 3. The examining attorney "submits that the applicant's proposed mark is merely descriptive of its goods." Brief at 2. Applicant maintains (brief at 8) that:

The mark MULTIMOLDS does not immediately tell customers what the goods or services are. The mark requires the exercise of imagination, thought and perception by the consumer. It is an incongruous word combination. The consumer's mind would not jump instinctively from a contemplation of the mark to knowledge of a quality or characteristic of the goods.

Inasmuch as applicant is seeking registration of its mark on the Supplemental Register, it is appropriate that we consider that the mark is admittedly merely descriptive of the goods. Registering a mark on the Supplemental

Register is an admission that the mark is merely descriptive. In re Consolidated Foods Corp., 200 USPQ 477, 478 n.2 (TTAB 1978) ("Registration of the same mark on the Supplemental Register is not prima facie evidence of distinctiveness; in fact, such a registration is an admission of descriptiveness"). See also Quaker State Oil Refining Corp. v. Quaker Oil Corp., 453 F.2d 1296, 172 USPQ 361, 363 (CCPA 1972) ("We also agree with the observation of the board that, when appellant sought registration of SUPER BLEND on the Supplemental Register, it admitted that the term was merely descriptive of its goods").

While we understand that the descriptiveness refusal was rendered moot by the amendment to the Supplemental Register, inasmuch as both applicant and the examining attorney discuss this refusal, we add the following in the event that they viewed the amendment as an alternative argument. In this case, the goods are in fact molds and these "Multimoulds can produce a whole range of products, such as hams and ham logs." Applicant's molds would be accurately described as "Multimolds" and prospective purchasers of these processing molds would understand that these molds can produce multiple food items. Furthermore, there is also evidence that other molds used for making

food products are referred to as MULTIMOLDS. *Post-Standard* (Syracuse, NY) (Candy - "So I started buying **multi-molds**"); www.sharpknives.com (Tartlet **Multi-Mold** Set); and www.surfasonline.com (Pastries - Each **multi-mold** sheet measures...).

Therefore, we conclude that the mark MULTIMOLDS is merely descriptive for stackable, metal processing molds for industrial food preparation.

Genericness

The ultimate issue in this case is whether the term MULTIMOLDS is generic for applicant's goods. "The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question." H. Marvin Ginn Corp. v. Int'l Association of Fire Chiefs, Inc., 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986).

Determining whether a mark is generic therefore involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered or retained on the register understood by the relevant public primarily to refer to that genus of goods or services?

Id. See also In re Steelbuilding.com, 415 F.3d 1293, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005).

"Evidence of the public's understanding of the term may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers, and other publications." In re Merrill Lynch, Fenner and Smith Inc., 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). Therefore, to be generic, members of the relevant public must primarily use or understand applicant's term as referring to the genus of its goods. Ginn, 228 USPQ at 530.

The examining attorney argues (brief at 5) that:

The brochure provided by the applicant illustrates that its product is a system of food processing molds that are used to shape or form a whole range of foods, with special emphasis on hams, pork, beef and poultry. The evidence in the record demonstrates that the term "MULTIMOLD" is used by the food processing industry to refer to food processing systems containing many molds, and which are used to shape or form foods, such as meats.

Applicant responds by arguing that with "one exception, all of the examples cited by the Office Action show the use of the term 'Multi-mold' as an adjective to modify a noun such as 'basic system' or 'racks and towers' or 'press towers,' etc. Thus, the term 'multi-molds' is

used by the buying public as a descriptive term modifying the name of the product." Brief at 2.⁵

We begin by determining the genus of the goods. Applicant's goods are "stackable, metal processing molds for industrial food preparation." The examining attorney argues that "the class or genus of the goods at issue is processing molds for food preparation." Brief at 4. We agree.

Next we must consider whether the term MULTIMOLDS is used by the "relevant public primarily to refer to that genus of goods." The term "molds" is obviously generic for these goods and the term "Multi" is very descriptive of molds that are used to shape foods into a variety of molds. As evidence that prospective purchasers would understand that the term is generic, the examining attorney has included several excerpts of use of the term MULTIMOLDS. Two of these references are apparently for the same pan (measures 11 7/8" long by 6 7/8"). www.surfasonline.com and <http://dvorsons.com>. Both these references use the term to refer to a "multi-mold sheet." Another reference refers to a "baking multi-mold sheet."⁶ These references

⁵ We note that applicant apparently admits that the term "Multimolds" is descriptive of its goods.

⁶ www.sharpknives.com.

appear to be highly descriptive uses rather than generic uses. Two of the foreign uses seem to be similar highly descriptive uses.

"To deny the registration of a mark as generic, the PTO has the burden of substantially showing that the matter is in fact generic based on clear evidence of generic use." Steelbuilding.com, 75 USPQ2d at 1421 (internal punctuation marks omitted). "Furthermore, doubt on the issue of genericness is resolved in favor of the applicant." In re DNI Holdings Ltd., 77 USPQ2d 1435, 1437 (TTAB 2005). The one domestic reference and one foreign reference that may indicate a generic-type use are hardly a clear or substantial showing of generic use. The other evidence, while it does demonstrate that the mark is descriptive, is more equivocal and it does not clearly show that the term is also generic. In the end, we have doubt as to whether there is clear evidence that the term MULTIMOLDS is generic for stackable, metal processing molds for industrial food preparation. Therefore, we reverse the examining attorney's refusal that the mark is generic.

Decision: The refusal to register applicant's MULTIMOLDS mark on the ground that the mark is generic is reversed. The examining attorney's refusal to register on the ground that the mark is merely descriptive is affirmed

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but, inasmuch as applicant has already submitted an amendment to seek registration on the Supplemental Register, the application will be forwarded to issuance on the Supplemental Register.